

BILL ANALYSIS

S.B. 15
By: Janek
Civil Practices
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, there is no specific state law relating to personal injury claims for asbestos exposure or silica exposure. It is the purpose of this Act to protect the right of people with asbestos-related and silica-related injuries to pursue their claims for compensation in a fair and efficient manner through the Texas court system. The Act aims to prevent scarce judicial and litigant resources from being misdirected by the claims of individuals who have been exposed to asbestos or silica, but have no functional or physical impairment from asbestos-related or silica-related disease. To accomplish this purpose, the Act adopts medically accepted standards for differentiating between individuals with nonmalignant disease causing functional impairment and individuals with no functional impairment, provides a method to obtain the dismissal of lawsuits in which the exposed person has no functional impairment while protecting a person's right to bring suit on discovering an impairing injury, and creates an extended period before limitations begin to run in which to bring claims for injuries caused by the exposure to asbestos or silica to preserve the right of those who have been exposed but are not yet impaired to bring a claim later in the event that they develop an impairing disease or injury.

SB 15 creates a new chapter in the Civil Practice and Remedies Code addressing asbestos and silica claims.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 2 (Section 90.012, Civil Practice and Remedies Code) of this bill.

ANALYSIS

SB 15 sets forth legislative findings regarding asbestos and silica. It amends Title 4, Civil Practice and Remedies Code (CPRC), by adding Chapter 90, entitled "CLAIMS INVOLVING ASBESTOS AND SILICA". It defines "asbestos," "asbestos-related injury," "asbestosis," "certified B-reader," "chest x-ray," "claimant," "defendant," "exposed person," "FEV1," "FVC," "ILO system of classification," "MDL pretrial court," "MDL rules," "mesothelioma," "nonmalignant asbestos-related injury," "nonmalignant silica-related injury," "physician board certified in internal medicine," "physician board certified in occupational medicine," "physician board certified in oncology," "physician board certified in pathology," "physician board certified in pulmonary medicine," "plethysmography," "pulmonary function testing," "report," "respirable," "serve," "silica," "silica-related injury," and "silicosis."

SB 15 requires pulmonary function testing required by this chapter to be interpreted by a physician with specific qualifications.

Requires a claimant asserting an asbestos-related injury to serve on each defendant specific information regarding physician reports. Requires a detailed occupational and exposure history to describe the exposed person's principal employments and whether there was exposure to airborne contaminants, and the nature, duration, and frequency of the exposure to airborne contaminants, including asbestos fibers and other dusts that can cause pulmonary impairment. Authorizes a claimant, if the pulmonary function test results do not meet set requirements, to serve on each defendant a report by a physician board certified in specific fields verifying that there is a physician-patient relationship and that the physician has concluded through xray evidence that the exposed person has asbestos-related lung disease causing impairment. Authorizes the claimant, if the radiological findings do not meet set requirements, to serve on

each defendant a report by a physician board certified in specific fields verifying that there is a physician-patient relationship and that the physician has concluded through pulmonary function testing and CT-scan evidence that the exposed person has asbestos-related lung disease causing impairment.

Requires a claimant asserting a silica-related injury to serve on each defendant a report by a physician board certified in specific fields containing specific information related to the exposed person's work and medical history. Requires the report for a claimant asserting a claim for silicosis to verify specific information regarding latency period, severity of exposure to silica, and that the physician has concluded that the exposed person's disease is not more probably the result of causes other than silica exposure. Requires the report, if the claimant is asserting a claim for silica-related lung cancer, to also include specific information regarding time lapse from initial exposure to silica and a diagnosis of silica-related lung cancer. Requires the report, if the claimant is asserting a claim for any disease other than silicosis or silica-related lung cancer alleged to be related to exposure to silica, to verify that the physician has diagnosed the exposed person with a disease other than silicosis or silica-related lung cancer and has concluded that the exposed person's disease is not more probably the result of causes other than silica exposure. Requires the detailed occupational and exposure history to describe the exposed person's principal employments and whether there was exposure to airborne contaminants, including silica and other dusts, and the nature, duration, and frequency of the exposure to airborne contaminants, including silica and other dusts that can cause pulmonary impairment.

Prohibits a physician, as the basis for a diagnosis, from relying on reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the exposed person's medical condition that was conducted in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted.

Requires that in an action filed on or after the date this chapter becomes law, a report must be served on each defendant no later than the 30th day after the date the party answers or otherwise enters an appearance in the action. Provides that in an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following the motion, appeal, or otherwise, commences on or before the 90th day after the date this chapter becomes law, a claimant is not required to serve a report on any defendant unless a mistrial, new trial, or retrial is subsequently granted or ordered. Requires a report to be served on each defendant, in an action pending on the date this chapter becomes law and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, commences after the 90th day after the date this chapter becomes law, on or before the 60th day before trial commences or the 180th day after the date this chapter becomes law.

Authorizes the defendant, if a claimant fails to timely serve a report, or serves on the defendant a report that does not comply with set requirements, to file a motion to dismiss the claimant's asbestos-related claims or silica-related claims. Requires the motion to include the reasons why the report does not comply with that section. Authorizes a claimant to file a response to a motion to dismiss on or before the 15th day after the date the motion to dismiss is served. Authorizes a report to be filed, amended, or supplemented within the time required for responding to a motion to dismiss. Requires the court, if the trial court is of the opinion that a motion to dismiss is meritorious, to grant by written order, the motion and dismiss all of the claimant's asbestos-related claims or silica-related claims, as appropriate, against the defendant. Authorizes the trial court to extend the time limits provided in this section for filing or serving motions, responses, or reports, on the motion of a party showing good cause.

Authorizes a claimant seeking damages arising from an asbestos-related injury or silica-related injury, before serving a report, to voluntarily dismiss the claimant's action.

Prohibits claims relating to more than one exposed person from being joined for a single trial, unless all parties agree otherwise.

Provides that the MDL (multidistrict litigation) rules apply to any action pending on the date this chapter becomes law in which the claimant alleges personal injury or death from exposure to asbestos or silica unless trial commences or is set to commence within the 90-day period

following the effective date of the Act, the case was filed before September 1, 2003 and the claimant files a report required by this Act within the 90-day period following the effective date of the Act, or the action was filed before September 1, 2003 and the claimant has been diagnosed with mesothelioma or other malignant cancer. Authorizes the defendant, in cases filed before September 1, 2003, in which the claimant fails to serve a required report on or before the 90th day after the date this chapter becomes law, to file a notice of transfer to the MDL pretrial court. Requires the MDL pretrial court to remand the action to the court in which the action was filed, upon determining that the claimant served a complying report on or before the 90th day after the date this chapter becomes law. Requires the MDL pretrial court to retain jurisdiction over the action pursuant to the MDL rules, if the MDL pretrial court determines that the report was not served on or before the 90th day after the date this chapter becomes law or the report served does not comply with requirements of this chapter. Requires the MDL pretrial court to expedite an action in which the exposed person is living and has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis. Prohibits the MDL pretrial court from dismissing an action filed before September 1, 2003, pursuant to this chapter, but requires a retention of jurisdiction over the action under the MDL rules, if the action was pending on the date this chapter becomes law and the claimant does not serve a report that complies with the medical criteria. Prohibits the MDL pretrial court from remanding such action for trial unless the claimant serves a report complying with this chapter or serves a report showing that the claimant cannot meet these requirements but can demonstrate an impairing asbestos-related or silica-related disease. Requires the MDL pretrial court, on motion by a defendant, in an action filed on or after the date this chapter becomes law that is transferred to an MDL pretrial court and in which the claimant does not serve on a defendant a report that complies with this chapter, to dismiss the action unless a report is served showing that the claimant cannot meet the requirements but can demonstrate an impairing asbestos-related or silica-related disease. Provides that in an action in which the claimant seeks remand for trial or denial of a motion to dismiss, the claimant shall serve on each defendant a specific report showing that the claimant cannot meet the requirements of this chapter but can demonstrate an impairing asbestos-related or silica-related impairment; and requires the MDL pretrial court to make specific findings about the claimant's claim of an asbestos-related or silica-related impairment. Requires a court's determination under 90.010(f) to be made after conducting an evidentiary hearing at which the claimant and any defendant to the action may offer supporting or controverting evidence. Requires the court to state its findings under 90.010(f)(2) in writing and to address specific information in its findings. Provides that any findings made by a court under 90.010(f) are not admissible for any purpose at a trial on the merits. Provides that 90.010(d)(2) and (e)-(i) apply only in exceptional and limited circumstances and have limited application and prohibits them from being used to circumvent the requirements of this chapter.

Provides that nothing in this chapter is intended to affect the rights of any party in a bankruptcy proceeding or affect the ability of any person to satisfy the claim criteria for compensable claims or demands under a trust established pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.).

Authorizes the supreme court to promulgate amendments to the Texas Rules of Civil Procedure regarding the joinder of claimants in asbestos-related actions or silica-related actions.

SB 15 amends Subchapter A, Chapter 16, CPRC, by adding Section 16.0031, to provide that in an action for personal injury or death resulting from an asbestos-related injury or silica-related injury, the cause of action accrues for purposes of Section 16.003, CPRC, on the earlier of the date of the exposed person's death or the date that the claimant serves a report complying with Section 90.003 or 90.004.

Amends Section 51.014(a), CPRC, to authorize a person to appeal from an interlocutory order of a district court, county court at law, or county court that denies a motion to dismiss filed under Section 90.007.

Amends Section 22.225(d), Government Code, to provide that a petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(11), CPRC.

Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to certain hearings and trials, including actions in which the claimant has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, or acute silicosis.

Amends Subchapter E, Chapter 21, Insurance Code, by adding Article 21.53X. Defines "health benefit plan." Provides that this article applies to any entity that offers a health benefit plan or an annuity or life insurance policy or contract in this state. Prohibits an entity that offers a health benefit plan or an annuity or life insurance policy or contract from using the fact of a person's exposure to asbestos fibers or silica or the person's filing of a claim governed by Chapter 90, CPRC, as the basis for certain punitive actions, that adversely affect the person's eligibility for or coverage under the policy or contract.

Application of Sections 90.009 and 16.0031, CPRC, as added by this Act, are prospective. Provides that Section 16.0031, CPRC, does not operate to revive any claims that are barred by application of the law in effect immediately before the effective date of this Act. Application of Article 21.53X, Insurance Code, as added by this Act, is prospective.

Provides that there is a direct appeal to the supreme court from an order, however characterized, of a trial court granting or denying a temporary or otherwise interlocutory injunction or a permanent injunction on the grounds of the constitutionality or unconstitutionality, or other validity or invalidity, under the state or federal constitution of all or any part of this Act. Provides that the direct appeal is an accelerated appeal.

Provides that Section 90.007, CPRC, Section 90.010(d), CPRC, and Section 16.0031, CPRC, as added by this Act are not severable, and none of those sections would have been enacted without the others. Provides that if any of those provisions are held invalid, all of those provisions are invalid. Provides that if any other provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act, other than Sections 90.007, 90.010(d), and 16.0031, Civil Practice and Remedies Code, as added by this Act, are declared severable.

EFFECTIVE DATE

September 1, 2005.